



UNITED NATIONS
NATIONS UNIES

**International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda**

OR: ENG

TRIAL CHAMBER II

Before: Judge Asoka de Silva, Presiding
Judge Taghrid Hikmet
Judge Seon Ki Park

Registrar: Mr Adama Dieng

Date: 3 October 2007

THE PROSECUTOR

v.

Emmanuel RUKUNDO

Case No. ICTR-2001-70-T

**DECISION ON DEFENCE MOTION FOR VIDEO-LINK
TESTIMONY FOR WITNESS SLB**

Office of the Prosecutor:

Mr William T. Egbe
Mr Sulaiman Khan
Ms Veronica Wright
Mr Patrick Gabaake
Mr Disengi Mugeyo
Ms Amina Ibrahim

Counsel for the Defence:

Ms Aïcha Condé
Ms Allison Turner

INTRODUCTION

1. The trial against Emmanuel Rukundo commenced on 15 November 2006. The Prosecution closed its case on 12 March 2007. The Defence commenced its case on 9 July 2007, and is scheduled to close its case at the latest by 11 October 2007.
2. On 16 August 2007, the Defence made an application for video-link testimony of Witness SLB.¹ In its Decision of 11 September 2007, the Chamber found the testimony of Witness SLB to be important since the witness was to testify on the allegations against the Accused relating to the killings of Tutsi refugees at the Saint Léon Minor Seminary and allegations of sexual assault.² The Chamber, however, denied the Defence request due to the late filing of the required supporting documents and the provision of inadequate justification for the video-link.³
3. On 27 September 2007, the Defence filed the present motion⁴ confidentially, requesting the Chamber to authorise Witness SLB to testify via video-link and provides, in annexes to its motion, a document from the witness as a justification for the video-link. The Defence submits that it received the justification only on 26 September 2007 and hence filed this motion on the following day.⁵ The Prosecution did not respond to the motion.

DELIBERATIONS

4. The Chamber recalls its earlier decision of 11 September 2007 regarding video-link testimony, where it stated as follows:

“... the Chamber recalls the general principle articulated in Rule 90(A) that “witnesses shall [...] be heard directly by the Chamber. Nonetheless, the Chamber has the discretion to hear testimony by video-link in lieu of physical appearance for purposes of witness protection under Rule 75, or where it is in the interests of justice to do so. In determining the interests of justice, the Chamber has to assess the importance of the testimony, the inability or unwillingness of the witness to travel to Arusha, and whether a good reason has been adduced for that inability and unwillingness. The burden of proof lies with the party making the request.”⁶

5. The Chamber notes, from the information provided in the annexes to the motion, that the witness claims that she is anxious after the arrest of the Defence investigator.⁷ The witness further asserts that it is difficult for her, as a victim of the events of 1994, to travel to testify on behalf of a person accused of such crimes.⁸ After careful examination of the annexes, the Chamber does not find the concerns for security of this witness, as presently articulated, sufficiently persuasive to order the particular measure of video-link testimony, and notes that the ordinary protective measures provided to all Defence witnesses in this case would suffice to address her concerns. The witness also claims that it is not possible for her

¹ Requête aux fins d'autoriser des témoins à décharge à déposer par voie de vidéoconférence, filed by Defence on 16 August 2007.

² Decision on the Defence Motions for Additional Time to Disclose Witnesses' Identifying Information, To Vary its Witness List and for Video-Link Testimony, and on the Prosecution's Motion for Sanctions (TC), 11 September 2007 (Decision of 11 September 2007), para. 24.

³ Decision of 11 September 2007, para. 24.

⁴ Requête en extrême urgence et confidentielle aux fins d'autoriser le témoin SLB à déposer par voie de vidéoconférence, filed by the Defence on 27 September 2007 (Defence Motion).

⁵ Defence Motion, para.15.

⁶ Decision of 11 September 2007, para. 23, with further references.

⁷ Annexe II, Defence Motion.

⁸ *Ibid.*

to leave her family for a long period of time.⁹ The Chamber finds that this concern can be addressed by appropriate planning and travel arrangements, and is not a basis to grant testimony via video-link. The Defence request is therefore denied.

6. Finally, the Chamber reminds the Defence that there are only a few days left for the close of the case. The Chamber notes that the Defence has already been reminded to make applications for video-link in a timely manner.¹⁰ At this late stage in the Defence case, the Chamber strongly disapproves of the continued lack of preparation of the Defence on such issues and its disregard for making such applications in a timely manner.

FOR THE ABOVE REASONS, THE CHAMBER

DENIES the Defence Motion.

Arusha, 3 October 2007

Asoka de Silva
Presiding Judge

Taghrid Hikmet
Judge

Seon Ki Park
Judge

[Seal of the Tribunal]

⁹ Annexe II, Defence Motion.

¹⁰ Decision on Defence's Urgent and Confidential Motion Requesting Authorization for Witness SJD to testify via Video-link (TC), 24 September 2007, para. 6.